Ford Brothers, Inc. *and* Teamsters Local Union No. 159, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America *and* Teamsters Local Union No. 505, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America. Case 9-CA-15848

August 4, 1982

DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND ZIMMERMAN

On March 30, 1982, Administrative Law Judge Jerry B. Stone issued the attached Decision in this proceeding. Thereafter, Respondent and the General Counsel filed exceptions and supporting briefs.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge and to adopt his recommended Order,[1] as modified herein.[2]

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that the Respondent, Ford Brothers, Inc., Coal Grove, Ohio, and Kenova, West Virginia, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, as so modified:

1. Substitute the following for paragraph 2(d):

"(d) Reimburse all employees for all initiation fees and dues paid by them to Teamsters Local Union No. 505, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, through dues checkoff since on or about August 1, 1980, with interest on any such moneys due the employees."

2. Substitute the attached notice for that of the Administrative Law Judge.

[1] In accordance with his dissent in *Olympic Medical Corporation*, 250 NLRB 146 (1980), Member Jenkins would award interest on the backpay due based on the formula set forth therein.

[2] We shall modify the Administrative Law Judge's recommended Order to provide for interest on all initiation fees and dues reimbursable to the employees.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT refuse to bargain collectively with Teamsters Local Union No. 159, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, and the Central Conference of Teamsters, as the exclusive collective-bargaining representative of all employees in the following appropriate unit:

> The employees of the Employer who work at the Employer's facility at Coal Grove, Ohio, and/or at Coal Grove, Ohio, and who were transferred to the Employer's Kenova, West Virginia, terminal and who were treated by the parties as covered by the collective-bargaining agreement, Central States Area Tank Truck Agreement, and the Ohio Rider to Central States Area Tank Truck Agreement, as specified in such agreements in effect in 1980, and as stipulated with respect to truckdriver and mechanic employees as being represented by Teamsters Local Union No. 159, and other Kenova terminal employees performing similar work, and excluding all office clerical employees, and all professional employees, guards and supervisors as defined in the Act constitute an appropriate bargaining unit. Such employees are also referred to in one of the above referred to agreements as follows:
>
> Section 1.2—Employees Covered
>
> (a) The employees covered by this Agreement shall include any and all the employees of the Employer employed directly by and/or under the supervision and control of the Employer within the jurisdiction of the Union and who are represented by the Local Union or during the life of this Agreement may come to be represented by the Local Union.

WE WILL NOT refuse to apply the terms and conditions of an existing collective-bargaining agreement with Teamsters Local Union No. 159 and the Central Conference of Teamsters covering employees in an appropriate collective-bargaining unit to employees in said unit when performing unit work.

WE WILL NOT discriminate against employees to rid ourselves of bargaining obligations under our contract with Teamsters Local

Union No. 159 and the Central Conference of Teamsters as the exclusive collective-bargaining representative of the employees in the appropriate unit set out above, nor will we otherwise discriminate against employees because of membership in any labor organization.

WE WILL NOT transfer unit employees or unit work or relocate appropriate unit operations from one facility to another without the consent of or without giving notice to and bargaining with the exclusive collective-bargaining representative within the meaning of Section 8(d) of the Act.

WE WILL NOT grant recognition to, execute a collective-bargaining agreement with, or otherwise maintain, enforce, or give effect to recognition or bargaining agreements with, or otherwise aid and assist in any other manner Teamsters Local Union No. 505, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, as the exclusive collective-bargaining representative of any of the employees in the appropriate unit described above.

WE WILL NOT threaten employees with discharge or other reprisals to force them to sign authorization cards for a union.

WE WILL NOT in any other manner interfere with, restrain, or coerce employees in the exercise of their rights guaranteed in Section 7 of the Act, except to the extent that such rights may be affected by lawful agreements in accord with Section 8(a)(3) of the Act.

WE WILL make the employees listed below whole for any loss of pay or other benefits they may have suffered by reason of the discrimination against them, with interest:

Leslie Burd	Lester Napier
Glenn Carr	Donald Rambo
Ellis Davis	William Riffe
Tex G. Devore	Dean R. Robinson
Homer Dickerson	Robert Ross
Boyce Dotson	Kenny Lee Skeens
Harold Grim	Kenny Ray Skeens
Carl Hamilton	Ivan Smith
Don Holbrook	Robert L. Smith
Glenn Hopper	Harry G. Sparks
Don Howard	Charles Spears
Fred Mann	William Stover
James McGinnis	John Thomas
George Menshouse	Hancel Truesdell
Harold Montavon	Tommy Ward
Chester Napier	Merrill Wells
Elmer Napier	Clayton Wheeler

WE WILL reimburse all employees for all initiation fees and dues paid by them to Teamsters Local Union No. 505, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, through dues checkoff since on or about August 1, 1980, with interest on any such moneys due the employees.

WE WILL rescind any existing collective-bargaining agreement with and withdraw and withhold recognition from Teamsters Local Union No. 505, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, as the exclusive bargaining representative of any of the employees in the appropriate unit described above, unless and until it has been certified by the National Labor Relations Board as such representative.

WE WILL apply the terms and conditions of the collective-bargaining agreement with Local Union No. 159 and the Central Conference of Teamsters, as it now exists or may be modified within the concept of collective bargaining, to all employees in the appropriate unit set forth above, as long as such Union is the exclusive collective-bargaining representative of such employees.

WE WILL recognize and, upon request, bargain in good faith with Teamsters Local Union No. 159, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, and the Central Conference of Teamsters, as the exclusive collective-bargaining representative of the employees in the above-described appropriate unit, with respect to the continued location or relocation of the unit facilities at Coal Grove, Ohio, and Kenova, West Virginia, or any adjustments thereto, and with respect to all other matters relating to wages, rates of pay, hours, and other terms and conditions of employment.

WE WILL submit the work at our Kenova, West Virginia, terminal for rebidding by our employees, with all employees having the same rights for such bidding as they had on September 27, 1980, and with the assignment of such employees to the Kenova, West Virginia, termina! to be in accordance with our collective-bargaining agreement with 159 and the Central Conference of Teamsters; provided, however, that if agreement is made with said Union resulting in a return of the Kenova, West Virginia, work to Coal Grove, Ohio, such rebidding by employees and reas-

signment of employees shall be in accordance with such agreement.

All our employees are free to become or remain, or refrain from becoming or remaining, members of any labor organization, except to the extent provided by Section 8(a)(3) of the Act.

FORD BROTHERS, INC.

DECISION

STATEMENT OF THE CASE

JERRY B. STONE, Administrative Law Judge: This proceeding, under Section 10(b) of the National Labor Relations Act, as amended, was heard pursuant to due notice on September 30, 1981, and October 1, 2, and 29, 1981, at Catlettsburg and Ashland, Kentucky.

The charge in Case 9-CA-15848 was filed on September 19, 1980. The second amended complaint in Case 9-CA-15848 was issued on September 25, 1981. The issues concern whether Respondent aided and assisted Local 505 of the Teamsters in securing authorizations from employees for representation, illegally recognized Local 505 as a bargaining representative, bypassed Local No. 159 in bargaining directly with employees, transferred operations, equipment, and employees for discriminatory reasons and without bargaining with Local No. 159 as to such transfers, and whether Respondent by certain of the above conduct violated Section 8(a)(1), (2), (3), and (5) of the Act.

All parties were afforded full opportunity to participate in the proceeding. Briefs have been filed by Respondent and the General Counsel and have been considered.

Upon the entire record in the case and from my observation of witnesses, I hereby make the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE EMPLOYER

The facts herein are based on the pleadings and admissions therein and the record as a whole.

At all times material herein, Ford Brothers, Inc., Respondent herein, an Ohio corporation with an office and place of business at Coal Grove, Ohio, herein called Respondent's facility, has been engaged in interstate transportation of liquid products in bulk by tank truck.

During a 12-month representative period, Respondent, in the course and conduct of its business operations described above, performed services valued in excess of $50,000 outside the State of Ohio.

As conceded by Respondent and based on the foregoing, it is concluded and found that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED[1]

Teamsters, Local Union No. 159,[2] affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

Teamsters Local Union No. 505,[3] affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *Preliminary Issues*

1. Supervisory status[4]

At all times material herein, the following named persons occupied the positions set forth opposite their respective names, and are now, and have been at all times material herein, supervisors of Respondent within the meaning of Section 2(11) of the Act and agents of Respondent within the meaning of Section 2(13) of the Act:

J. Robert Ford—president
Richard Trettin—vice president
Sidney Gibson—terminal manager, Kenova, West Virginia, terminal
Charley Hamlin—director of personnel and labor relations, Coal Grove, Ohio, terminal

2. Agency status

At all times material herein, James R. Boyd occupied the position of president of Local 505, and is now, and has been at all times material herein, an agent of Local 505 within the meaning of Section 2(13) of the Act.

3. The appropriate bargaining unit[5]

The employees of Respondent who work at Respondent's facility at Coal Grove, Ohio, and/or at Coal Grove, Ohio, and who were transferred to Respondent's Kenova, West Virginia, terminal, and who were treated by the parties as covered by the collective-bargaining agreement, Central States Area Tank Truck Agreement, and the Ohio Rider to Central States Area Tank Truck Agreement, as specified in such agreements in effect in 1980, and as stipulated with respect to truckdriver and mechanic employees as being represented by Teamsters Local 159, and other Kenova terminal employees performing similar work, and excluding all office clerical employees, and all professional employees, guards and supervisors as defined in the Act constitute an appropriate bargaining unit within the meaning of Section 9(b) of

[1] The facts are based on the pleadings and admissions therein.
[2] Sometimes simply referred to herein as Local 159.
[3] Sometimes simply referred to herein as Local 505.
[4] The facts are based on the pleadings and admissions therein.
[5] The facts are based on the exhibits, stipulations, and fair inferences therefrom.

the Act. Such employees are also referred to in the above referred to agreements as follows:

> Section 1.2—Employees Covered
>
> (a) The employees covered by this Agreement shall include any and all the employees of the Employer employed directly by and/or under the supervision and control of the Employer within the jurisdiction of the Union and who are represented by the Local Union or during the life of this Agreement may come to be represented by the Local Union.

I note that Respondent raises the question of a national bargaining unit. I note also that the Central States Area Tank Truck Agreement contains reference to a "Multi-Employer Unit" as is revealed by the following excerpt from such agreement:

> The parties agree to become a part of the multi-employer, multi-union bargaining unit established by this Central States Area Tank Truck Agreement, and to be bound by the interpretations and enforcement of this Central States Area Tank Truck Agreement and Supplements thereto.
>
> The parties further agree to participate in joint negotiations of any modification or renewal of this Central States Area Tank Truck Agreement and Supplements thereto and to remain a part of the multi-employer, multi-union bargaining unit set forth in such renewed Agreement and Supplements thereto.

It is clear that the local appropriate bargaining unit is also part of a multiemployer, multiunion unit. A review of the Central States Area Tank Truck Agreement reveals delineation of matters of local and regional interests. Thus, the basic core bargaining unit of employees involved in the issues in this case is the unit of Respondent's employees represented by Local 159. The issues concern only employees in such bargaining unit.

B. *Representative Status*

The parties entered into stipulations relating to the representative status of Teamsters Local 159 as is revealed by the following excerpts from the record:

> Mr. Lang: Your Honor, as a result of a discussion between Respondent's Counsel and myself, my understanding is that paragraph six has been denied by Respondent, and Respondent would be welcome to stipulate as follows: For a period of approximately 20 years, and all times material herein, the Charging Party has been the designated collective bargaining representative of Respondent's truck driver and mechanic employees at the Coal Grove, Ohio location and during such time, the Charging Party has been recognized as such representative, by the Respondent. Such recognition has been embodied in the successive collective bargaining agreement, the most recent which is effective by its terms for the period of November, 1979, to November 14, 1982.
>
> * * * * *
>
> Mr. Flamm: Your Honor, it's my understanding that the Respondent further stipulates, with respect to paragraph six B, which has been denied, that at all times material herein, the Charging Party, by virtue of Section 9A and has been, and is, a representative of all the employees referred to in previous stipulation. For the purpose of the collective bargaining with respect to the recent pay, wages, and hours of employment, and other terms of the conditions of employment.

Statements by Respondent's counsel seem to indicate that the real dispute with the General Counsel's pleadings as to the alleged appropriate bargaining unit and as to alleged representative status of the Union is whether there were more than one representative of the employees in the appropriate bargaining unit. The parties' litigation of this issue indicated that these issues were not of great moment.

I note that the stipulations concerning status conferred by Section 9(a) of the Act would support a finding of exclusive representative status by Teamsters Local 159 as regards the employees in the appropriate bargaining unit. The collective-bargaining agreement between the parties[6] reveals in effect that the exclusive collective-bargaining representative of the employees in the appropriate bargaining unit is *the Union* and that the Union is composed of the Central Conference of Teamsters and Local Union No. 159. Such contract sets out in specifics who is to act for the "Union" in various situations. In overall effect, it appears that Local 159 would handle day-by-day and local affairs. Considering the correspondence between the parties and their actions otherwise, such *single, integrated, exclusive collective-bargaining agent* with individuals or components thereof acting as specifically set forth in the contract is clearly revealed and so found.

In the instant case, it would appear that specific findings as to whether the exclusive collective-bargaining representative is Local 159 or Local 159 and the Central Conference of Teamsters are not necessary. The question of whether Respondent has violated the Act regarding its dealings with Local 159 and the Central Conference of Teamsters has been fully litigated, and the ultimate findings herein would be the same under findings that Local 159 is the exclusive collective-bargaining representative or that Local 159 and the Central Conference of Teamsters constitute a single, integrated, exclusive collective-bargaining representative.[7]

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[6] The Central States Area Tank Truck Agreement—November 15, 1979—November 14, 1982.

[7] I note that contractual language refers to the fact that Local 159 and the Central Conference of Teamsters *are* exclusive collective-bargaining representatives. Such looseness in language is often observed in the description of two entries constituting in effect a single legal entity or a joint representative.

C. *The Deferral Issue*

The parties presented excellent briefs with respect to their arguments as to whether or not decision in the instant matter should be deferred to allow the parties to determine the issues involved under their contractual grievance arbitration machinery. It is clear that such contractual grievance arbitration machinery exists. Respondent argues that, in accordance with *Roy Robinson, Inc. d/b/a Roy Robinson Chevrolet*, 228 NLRB 828 (1977), this proceeding should be deferred to arbitration since the issue involves a contention that Respondent's action is justified under the collective-bargaining agreement. The General Counsel argues that the principles set forth in *Los Angeles Marine Hardware Co., a Division of Mission Marine Associates, Inc.; and California Marine Hardware Co., a Division of Mission Marine Associates, Inc.*, 235 NLRB 720 (1978), are controlling and that the decision in the instant proceeding should not be deferred to the contractual grievance arbitration machinery because Respondent's conduct involved a repudiation of an existing collective-bargaining agreement and relationship. It is not disputed that Respondent moved a large part of its Coal Grove, Ohio, operation to Kenova, West Virginia; ceased applying its existing contract to the employees tranferred to Kenova; ceased recognizing Local 159 and the Central Conference of Teamsters as a single, integrated, exclusive collective-bargaining representative of such employees as were moved to Kenova; recognized and signed a collective-bargaining agreement with Local 505 of the Teamsters; and utilized a different wage structure for employees. Had Respondent (1) simply moved its operations and utilized the wage structure of the "Kentucky" rider, and (2) continued to recognize Local 159 and the Central Conference of Teamsters, one might construe that the overriding issue was one of whether Respondent's actions were justified by the contract. In my opinion, the issues go beyond a question of contractual justification. I am persuaded that the issues concern questions of repudiation of the contract and repudiation of the existing collective-bargaining representative. This being so, under the principles approved in *Los Angeles Marine Hardware Co., supra*, Respondent's motion that the instant proceeding be deferred to arbitration is denied.[8]

D. *Background*

The critical events concerning the issues in this case commenced in April 1980. Prior to April 1980, the following may be said to constitute the setting.

Ford Brothers was a corporation engaged in the transportation of liquid and dry products in bulk by tank truck. It maintained large or reasonably large terminals at Coal Grove, Marietta, Columbus, and Cincinnati, Ohio. Its employees at such terminals were represented by the Teamsters Union or entities thereof. For over 20 years, Ford Brothers had had a bargaining relationship with entities of the International Teamsters Union. Such relationship had resulted in contracts as have been referred to in the section of this Decision relating to the "deferral" issue. There is no evidence that the bargaining relationship between Ford and the Teamsters had been other than what might be described as amicable. Employees at the above referred to locations belonged to different locals of the Teamsters, and each of such locals and the Central Conference of Teamsters constituted a single, integrated, exclusive collective-bargaining representative for the employees at each respective location. At the Coal Grove, Ohio, terminal, Local 159 and Central Conference of Teamsters constituted a single, integrated, exclusive collective-bargaining representative for the Coal Grove employees in the appropriate bargaining unit at Coal Grove, Ohio.[9]

All of the aforementioned terminals were covered by the previously mentioned Central States Area Tank Truck Agreement and the Ohio Rider to Central States Area Tank Truck Agreement.

Ford Brothers also had a small terminal at Neal, West Virginia. There were around three employees at the Neal, West Virginia, terminal of the type that would have been in the bargaining unit if employed at Coal Grove, Ohio. The Neal, West Virginia, employees were not represented by any union, and there were no collective-bargaining contracts covering such employees. There is no evidence that Ford Brothers had any terminals excepting the ones in Ohio and Neal, West Virginia. There also is no evidence that any collective-bargaining agreements concern Ford's employees other than the ones previously discussed.

The facts are clear that prior to Respondent's decision to transfer operations from Coal Grove, Ohio, to Kenova, West Virginia, Respondent had been opposed to the unionization of the Kenova, West Virginia, employees.

The record clearly establishes that Respondent was concerned in early 1980 over the economic factors of its Coal Grove operation. It is clear that Respondent believed it could improve its profits if it moved its Coal Grove operation so that at least part of its base would be closer to the Ashland Refinery, one of its larger customers. It is also clear that Respondent was desirous of a more favorable wage structure or plan than was in effect under its current collective-bargaining agreements.

The overall record reveals that Respondent's consideration of its economic beliefs set out above did not result in a firm decision as to any steps other than contacting the Union for economic relief.[10] Such contract was made on or around April 22, 1980.

[8] I note that the Respondent refers to the fact that there are close and well-established relationships between the parties and that I made such observation at the hearing of this matter when remarks were made to encourage the parties to pursue settlement of the instant proceeding. Such pursuit was ultimately fruitless.

[9] Local 159 and the Central Conference of Teamsters are referred to herein as a single, integrated, exclusive collective-bargaining representative. There have been cases where two different entities have been referred to as a joint representative and such joint representative has been certified as the exclusive collective-bargaining representative of certain employees. The reference herein to a single, integrated, exclusive collective-bargaining representative is intended to connote the same meaning or standards as has been used with respect to references to "Joint Representative" as descriptive of an exclusive collective-bargaining representative.

[10] Considering the proposed drivers' addendum of May 8, 1980, I am persuaded that Respondent had decided to get economic relief and to

Continued

E. *The Meeting With Business Agent Everett*

It is undisputed that Respondent had meetings and discussions with Vic Everett, a business agent for Local 159. Everett was deceased at the time of the hearing in this matter and great argument has been presented concerning the credibility of witnesses who testified as to statements by Everett. In essence, Respondent presented testimony to the effect that Respondent spoke to Everett of its problems and secured approval from Everett to approach its employees directly. The General Counsel presented a position paper prepared by Respondent's attorney, which in effect was contradictory of the facts related by Respondent's witnesses. Respondent's counsel did not present evidence relating to the position paper but made a statement on the record that the position paper was prepared by him, was based on knowledge which was "second hand" or "third hand," and that the facts represented by him at that time did not fully and accurately reflect the facts as they existed. Other evidence appeared to indicate that at least some of the facts for the position paper had been secured by a paralegal in Respondent's attorney's office and had been secured by usage of the telephone. In any event, Hamlin, director of personnel and labor relations, had talked to such paralegal after charges had been filed in the instant case. The facts also reveal that Hamlin had received a copy of Respondent's position paper and that no steps had been taken to correct any misinformation that had been set forth in said position paper.

The General Counsel argues that weight should be given to the "position paper" as an admission against Respondent because prior advisement of misinformation had not been furnished to the General Counsel.

Under Board law, testimony relating to statements by a deceased person is *admissible* but subject to *great* and *careful scrutiny.*[11] This being so, Respondent's *position paper* compounds the difficulties of assessment of the testimony relating to statements by a deceased person. I noted that Hamlin, as a witness, appeared to have a hearing problem. Such would contribute to problems of securing reliable and accurate information by telephonic communication. I note, however, that Hamlin and the other witnesses as to the conversation between Respondent officials and Everett appeared to be honest and truthful. This observation is made despite the fact that many leading questions were utilized. Hamlin gave truthful answers contrary to the suggestive leading questions. Most important in determining the credibility of witnesses as to the conversations with Everett is a letter dated May 27, 1980, to Everett with a copy to Robert Cassidy, chairman, Ohio Conference of Teamsters. In my opinion, this letter is consistent with the testimony of Respondent's witnesses as regards discussions with Everett. There is no evidence that Everett or Cassidy disputed the factual assertions set forth in such letter.

Considering the foregoing, I credit Respondent's witnesses, Trettin, Hamlin, and Ford, as to their testimony relating to a conversation with Everett on April 22, 1980. I find as fact that Respondent told Everett of its economic problems and ideas of possibly moving the terminal or the need for wage adjustments. I find as fact that Everett indicated to Respondent that they were free to discuss such problems and plans with the individual employees.

F. *Events of Late April and Early May 1980—Alleged Threats and Direct Dealing With Employees*

Following Respondent's discussions with Business Agent Everett on April 22, 1980, Respondent had meetings with its employees (in the bargaining unit). Such meetings occurred during the period April 23 through May 10, 1980. At such meetings, Respondent discussed its economic problems and desire for relief. At least around May 8, 1980, Respondent gave employees copies of a proposed "Special Driver's Addendum to Central States Area Tank Truck Agreement and Ohio Rider for Ford Brothers, Inc." Said addendum had the date of May 8, 1980.[12] Said addendum set forth lower wage rates than existed under the current collective-bargaining agreement. Respondent official Trettin utilized certain data previously prepared to reflect Respondent's economic problems. Employees were requested to sign the above referred to addendum. Some of the employees disputed the validity of Respondent's economic data. Vice President Trettin told Homer Dickerson and the employees with him that if the employees did not sign the addendum there would be no work at the Coal Grove terminal.

Employee Rambo, who was with Dickerson, testified to the effect that Trettin told Dickerson and the other employees that the Company was in a financial bind, and that if it did not get some relief there might not be a company.

The facts are clear that Director of Personnel and Labor Relations Hamlin participated in some of the meetings described above. Such meetings clearly involved direct dealing with employees concerning their wages.

The overall facts reveal that Respondent's bargaining unit employees rejected its proposed special addendum.

Contentions and Conclusions

1. The General Counsel alleges and Respondent denies that:

> During late April or early May 1980 . . . Respondent, acting through Richard Trettin, at Respondent's Coal Grove, Ohio facility, threatened an employee with loss of employment for all employees at Respondent's Coal Grove, Ohio facility, if the employees did not agree to a reduction in rates of pay

continue its Coal Grove operations in total if such relief were forthcoming. If Respondent had received such relief and then had moved its operations, it is obvious that great labor problems would ensue. Such addendum referred to *maintaining and/or expanding* work opportunities for the Coal Grove bargaining unit employees.

[11] *Goodwater Nursing Home, Inc.*, 222 NLRB 149 (1976); *Eastern Market Beef Processing Corporation, Alfred and Scott Street Divisions*, 259 NLRB 102 (1981).

[12] Said addendum indicated that its purpose *was* to *maintain* and *expand* work opportunities for the bargaining unit employees.

set forth in Respondent's contract with the Charging Party.

Considering all of the facts, I am not persuaded that Respondent, by Trettin, threatened employees with retaliation if they failed to agree to a reduction in rates of pay. Rather, the overall facts reveal that Trettin indicated to employees that Respondent was concerned that it could not stay in business at Coal Grove under the current existing collective-bargaining agreement, and that any loss of employment would be one flowing from economic effect. Accordingly, I conclude and find that Respondent, by Trettin's remarks relating to economic conditions, did not violate Section 8(a)(1) of the Act.

2. The General Counsel alleges and Respondent denies that, during late April and early May 1980, Respondent, acting through Charlie Hamlin, at Respondent's Coal Grove, Ohio, facility, bypassed the Union and dealt directly with its employees in the bargaining unit by meeting with said employees and promising new rates of pay lower than those applicable to them under the collective-bargaining agreement.

The facts are clear that Hamlin met with and dealt directly with bargaining unit employees concerning an attempt to secure their agreement to new rates of pay lower than those applicable under the collective-bargaining agreement. The critical issue is whether such efforts by Respondent had been authorized by Everett for the Union. Considering Hamlin's letter of May 27, 1980, to Everett, with copies of such letter to Robert Cassidy, chairman of the Ohio Conference of Teamsters, and the lack of any evidence that the exclusive collective-bargaining representative protested such actions after receipt of such May 27, 1980, letter, I am persuaded that the facts reveal that Respondent's direct dealing with employees was authorized by the exclusive collective-bargaining representative. Accordingly, it is concluded and found that the allegations of unlawful conduct, of direct dealing with bargaining unit employees, is not established. Such allegations will be recommended to be dismissed.

G. *Events of May 18, 1980*

Following the events concluding on or around May 10, 1980, involving a rejection by bargaining unit employees of Respondent's proposed special addendum of May 8, 1980, Respondent contacted Teamsters Local No. 505 regarding its "expansion of its Kenova, West Virginia facility." Hamlin, on May 18, 1980, telephoned Boyd, president of Teamsters Local No. 505, and discussed the expansion of such West Virginia facility.

H. *Events—May 27-July 15, 1980*

1. On or about May 27, 1980, Respondent transmitted the following letter to Local 159.

May 27, 1980

Mr. Vic Everett, Business Agent
Teamsters Local Union No. 159
1701 Jackson Avenue
Portsmouth, Ohio 45662

RE: Coal Grove, Ohio, Terminal Closing—*Effective June 29, 1980.*

Dear Mr. Everett:

This will confirm our discussions and meeting with you (4-22-80) and Mr. Robert Cassidy (5-05-80), Chairman of the Ohio Conference of Teamsters, representatives of the bargaining unit employee drivers per the above captioned.

The bargaining unit drivers were advised from April 23rd through May 10th, 1980, regarding the severe economic and competitive circumstances existing at this terminal location. In an effort for the company to remain at this location, maintaining and/or expanding work opportunities, being in a position to afford drivers the opportunity to secure a livelihood, the needed incentive Special Work Addendum (per Article 24, Section 24.1 of the Central States Area Tank Truck Agreement and Ohio Rider) was presented to the drivers. The company's efforts were rejected by the bargaining unit employee drivers.

It was understood at time of discussions and meetings, as previously mentioned, the existing circumstances would force the permanent closing of the Coal Grove, Ohio, terminal and the bargaining unit drivers presently working would only retain the rights specified in Article 5, Section 5.5 of the Central States Area Tank Truck Agreement.

Since the competitive and economic circumstances which were the subject of said meetings have not improved, the company has no recourse but to advise you that our heretofore tentative decision to close the Coal Grove, Ohio, terminal has been finalized. Accordingly, the Coal Grove terminal will be permanently closed effective June 29, 1980. Appropriate bids shall be posted in the Coal Grove terminal to provide the employee drivers the voluntary opportunity to follow the work which will be transferred.

In accordance with the provisions of the National Labor Relations Act, Ford Brothers, Inc. stands ready to meet with Local No. 159 as the representative of its employee drivers at the Coal Grove, Ohio, office facility to discuss fully the effects of this pending closing. Please contact me as soon as possible if you wish to discuss this issue any further.

Respectfully,

FORD BROTHERS, INC.

/s/ Charlie M. Hamlin
Charlie M. Hamlin
Director of Personnel and Labor Relations

Certified Mail No. 922763
Return Receipt Requested

cc: Mr. Robert Cassidy, Chairman
Ohio Conference of Teamsters
Certified Mail No. 966764
Return Receipt Requested

Mr. J. Robert Ford
Mr. R. T. Trettin

2. On or about May 28, 1980, Respondent posted "Bulletin No. 50." Such bulletin notified the drivers in effect that the Coal Grove terminal would be closed effective as of June 29, 1980, and that bids would be posted for transfers to other Ford terminals. Such bulletin included bid forms for transfers to Columbus, Ohio; to Cincinnati, Ohio; and to Kenova, West Virginia.[13]

3. On or about June 16, 1980, Director of Personnel and Labor Relations Hamlin notified President Boyd, of Teamsters Local No. 505, that the expansion of the Kenova, West Virginia, facility would become effective on June 29, 1980.[14]

4. At some point of time after June 16 and prior to June 24, 1980, the Respondent had conversations with Cassidy of the Ohio Conference of Teamsters and agreed to postpone the closing of the Coal Grove terminal.

5. On or about June 24, 1980, Respondent notified its employees that the closing of the Coal Grove, Ohio, terminal had been postponed to a later date "pending the outcome of a forthcoming meeting scheduled with the Chairman of the Ohio Conference of Teamsters and committee members."[15]

6. On June 30, 1980, Trettin for Respondent transmitted the following letter to the Union.[16]

June 30, 1980

Mr. Robert Cassidy, Chairman
Ohio Conference of Teamsters
1127 Ninth Street, S.W.
Canton, Ohio 44707

Dear Mr. Cassidy:

In accord with my commitment to inform you of any steps taken or contemplated in the matter of our closing of the Coal Grove terminal and corresponding transfer of business to Columbus, Cincinnati and Kenova facilities, I have enclosed completed copies of our Bulletin No. 50 Special Notice.

It should be noted in review hereof that the determination to close the Coal Grove facility is now, and has always been, based upon economic and operational considerations apart from the driver's rejection of our incentive proposal. As such, we have attempted to make our intentions clear to all involved. Upon inquiry of the drivers relative to the import of our scheduled meeting, it was emphasized that matters to be discussed therein would not include a change in our posture relative to Coal Grove and the consequent transfer of business. It was further explained that the physical closing of Coal Grove was simply being delayed until after our meeting in hopes of an arrangement which would apply company-wide, including the facilities to which business is to be transferred.

As can be readily observed, someone has erroneously advised the Coal Grove drivers that they were to ignore our Bulletin No. 50 based upon the delay of the physical closing of Coal Grove. The Special Notice and attachments thereto were available for a period of thirty (30) days, allowing more than ample time for decisions regarding the following of work to be made. We must, in light of the failure of the majority of Coal Grove drivers to indicate their work preferences as offered, assume that they have been misinformed or in the alternative, that they do not intend to exercise their option to follow the work to be transferred. In either case, we feel that the action (or lack thereof) absolutely jeopardized the ability of this company to achieve proper economics in its operation and plan for enhanced work opportunities for its employees.

Your kind consideration hereof is greatly appreciated. I will see you on the 7th in Columbus.

Sincerely,
FORD BROTHERS, INC.
/s/ Richard T. Trettin
Richard T. Trettin,
Vice President

Certified Mail No. 922774, R.R.R.

cc: Roger Hunt, President Local #159 Certified Mail No. 922775, R.R.R.

7. On July 7, 1980, the Respondent met with representatives of the Ohio Conference of Teamsters and the various locals representing employees at its various terminals. Various proposals concerning relief or contract adjustment on a companywide basis were discussed. During this meeting, Respondent pointed out the "Kentucky" rider as comparison to the "Ohio" rider. A plan of compensation based on a percentage of the load was discussed and rejected by the Teamsters. A suggestion was made to Respondent to formulate a compensation program based on mileage and hours. On July 8, 1980, Respondent formulated a mileage and hour proposal and submitted the same to the Union. On July 15, 1980, the Union notified Respondent that its proposal (mileage and hour type) had been rejected.

8. On or about August 25, 1980, Respondent transmitted to its employees the following bulletin:

[13] Respondent contends that in effect it had made two separate decisions, (1) to move to Kenova, West Virginia, and (2) to get companywide contractual relief. Although a finding either way would not affect the ultimate decision in this case, the overall facts *and statements set forth in writing* in the *special drivers* addendum of May 8, 1980, clearly reveal that Respondent first sought contractual relief under circumstances to indicate that movement to Kenova was an alternative decision which came into being only after Respondent's May 8, 1980, proposal had been rejected. Thus, it is noted that Respondent contacted Boyd concerning "expansion of" the West Virginia facility only after the rejection of the May 8, 1980, proposal.

[14] The overall facts reveal that the "closing" of the Coal Grove facility and the expansion of the Kenova facility were intended in effect to constitute a simultaneous act. In effect, a transfer of operations was contemplated.

[15] Prior to this time, Respondent had been engaged in efforts to modify the method of driver compensation at its Columbus, Cincinnati, and Marietta facilities.

[16] A review of the statements in this letter as compared to written statements in the May 8, 1980, proposal persuades that the statements in this letter relating to reasons for closing the Coal Grove terminal are self-serving and not to be found factually based.

AUGUST 25, 1980

BULLETIN NO. 55

NOTICE: To all driver personnel domiciled at Ford Brothers, Inc., 510 Riverside Drive, Coal Grove, Ohio

Per—*Article 5, Section 5.5., Paragraph (b) (2) of The Central Conference of Teamsters Tank Truck Agreement.*

This is to advise all driver personnel and Local Union No. 159 per above notice Ford Brothers, Inc., is partially closing the Coal Grove, Ohio, terminal. Part of the remaining business and work is being transferred to another terminal location as the company has no recourse since the competitive and economic circumstances have not improved as of this date. Accordingly, the partial closing of Coal Grove, Ohio, terminal will become effective September 28, 1980.

As specified in Article 5, Section 5.5., Paragraph (b) (2) of The Central Conference of Teamsters Tank Truck Agreement, "when a branch, terminal, division or operation is closed or partially closed and the work of the branch, terminal, division or operation is transferred to another branch, terminal, division or operation in whole or in part, an employee at the closed or partially closed down branch, terminal, division or operation shall have the right to transfer to the branch, terminal, division or operation into which the work was transferred if regular work is there available. Any employee who elects to transfer in accordance with the provisions of this section shall, as of the date that work becomes available and they are put to work at the terminal into which they are transferring, be dovetailed into the seniority list of the terminal into which they are transferring in accordance with their company seniority."

(1) Effective September 28, 1980, the Coal Grove, Ohio, terminal facility will continue to operate and handle the present business or work that has been generated in Coal Grove, Ironton, South Point and Haverhill, Ohio, area.

(2) Effective September 28, 1980, the Kenova, West Virginia, terminal facility will continue to operate and handle the present business or work that has been generated in Kenova, Huntington and Charleston, West Virginia, and Leach, Kentucky, area.

As previously stated above, the employee driver(s) wishing to follow said work being transferred per Article 5, Section 5.5, Paragraph (b) (2) of The Central Conference of Teamsters Tank Truck Agreement may do so voluntarily by signing the Bid Notice, Appendix A.

Your immediate supervisor at the Coal Grove, Ohio, terminal has been posted with referred Bid Notice (Appendix A), being available for signature of driver(s) wishing to follow work being transferred.

Should an employee driver now employed and working for Ford Brothers, Inc., at Coal Grove, Ohio, terminal fail to sign bid notice to follow the transfer of work as mentioned above prior to September 28, 1980, such employee driver(s) will have forfeited his individual rights to avail himself for a transfer at a later date per this transfer of work.

In accordance with the Central Conference of Teamsters Tank Truck Agreement, your representatives, Local Union No. 159 and the Chairman of the Ohio Conference of Teamsters, have been notified regarding the partial closing Coal Grove, Ohio, terminal facility.

Respectfully,

FORD BROTHERS, INC.

/s/ Charlie M. Hamlin

Charlie M. Hamlin

Director of Personnel & Labor Relations

cc: J. Robert Ford

Richard T. Trettin

Roger Hunt, Pres., Local N. 159

Certified Mail No. 922781, R.R.R.

Robert Cassidy, Chairman

Ohio Conference of Teamsters

Certified Mail No. 922782, R.R.R.

Copy to all Coal Grove, Ohio drivers mailed to last known address.

I. *Events of Late July and Early August 1980; Alleged Unlawful Assistance*

Prior to May 1980, Respondent had two or three employees, of the classifications in the appropriate bargaining unit, employed at Neal, West Virginia. Such employees were not represented by any union and were not covered by any collective-bargaining agreement. As indicated, after bargaining unit employees at Coal Grove had rejected proposed changes in the method of computation of pay, Labor Relations Director Hamlin on May 18, 1980, contacted President Boyd of Local 505 of the Teamsters and discussed expansion of Respondent's West Virginia facility, referred to above. Around this time, Respondent moved its Neal facility to Kenova, West Virginia.

The overall facts reveal it clear that the "partial closing" of Coal Grove and the expansion of the West Virginia facility constituted related acts. After the Union (Local 159 and the Central Conference of Teamsters) on July 15, 1980, rejected Respondent's "mileage and hour" proposal, the Respondent and Local 505 entered into a collective-bargaining agreement, around early August, concerning employees employed and to be employed at a facility at Kenova, West Virginia. The facts are clear that the agreement between the Respondent and Local 505 occurred before a representative complement of employees had been hired or transferred to such facility, and even before *any employee* had signed a card author-

izing Local 505 to be the *exclusive* collective-bargaining representative of such employee.[17]

Around a week or two before Respondent entered into a collective-bargaining agreement with Local 505, around August 1980, Superintendent Gibson told employee Smith in effect that the employees would have to go union if they wanted to work. In total effect what Gibson told Smith is revealed by the following credited excerpts from Smith's testimony:

> He said that we'd have to go union. If we wanted to work, we'd have to go union. I said is this you saying this, or is this Ford Brothers saying this? And he said, this is Ford Brothers saying this. He said, they said they wouldn't jeopardize the terminal over here for three men. That you work union if you work at this terminal. You would be union.

Prior to the above event, none of Respondent's West Virginia facility employees had belonged to a union. In fact, in the past, Respondent had clearly opposed the unionization of such employees.

Also, it is noted that the two employees who signed authorization cards for Local 505 of the Teamsters signed such cards in a coercive background. Thus, the above statements by Gibson had been made. The employees were directed to Hamlin's office, were given union cards by Hamlin, and were told in effect to predate such cards in order to obtain "benefits" as of August 1, 1980. Such cards were later transmitted by Hamlin to Local 505.

Contentions and Conclusions

1. The General Counsel alleges and Respondent denies that on or about July 30, 1980, Respondent, acting through Sidney Gibson, at Respondent's Kenova, West Virginia, facility, impliedly threatened an employee with discharge unless the employee executed an authorization card accepting Teamsters Local 505 as his representative for the purposes of collective bargaining by stating that Respondent would not allow nonunion employees to jeopardize the Kenova facility.

Considering all of the facts in total context, I conclude and find that Gibson's remarks to employee Smith constituted a threat as alleged, and that such threat constituted conduct violative of Section 8(a)(2) and (1) of the Act.

2. The General Counsel alleges and Respondent denies that:

> During early August, 1980 . . . . Respondent, acting through Charley Hamlin, at Respondent's Kenova, West Virginia, facility, by requesting employees to execute authorization cards accepting Local 505 as their representative for the purpose of collective bargaining, and acting as a conduit for the transmittal of executed authorization cards to Local 505, rendered aid, assistance and support to Local 505.

Considering all of the facts set forth above, it is clear that Respondent, by Hamlin, violated Section 8(a)(2) and (1) of the Act by rendering aid, assistance, and support to Local 505 as alleged. It is so concluded and found.

3. The General Counsel alleges and Respondent denies that:

> On or about August 8, 1980, Respondent and Local 505 entered into a collective-bargaining agreement covering the rates of pay, wages, hours of employment and other terms and conditions of employment of Respondent's employees in the following unit:
>
> > All employees, including truck drivers and mechanics, employed by the Respondent at its Kenova, West Virginia facility; but excluding all office clerical employees, and all professional employees, guards and supervisors as defined in the Act.

Considering all of the above referred to facts and the collective-bargaining agreement between Local 505 and Respondent in the record as an exhibit, it is clear that the facts as alleged have been established.

4. The General Counsel alleges and Respondent denies that "Respondent recognized and entered into the collective-bargaining agreement with Local 505, as described above, notwithstanding the fact that Local 505 did not represent an uncoerced majority of Respondent's employees in the said unit."

Considering all of the above facts, it is clear and I conclude and find that the facts as alleged have been established. Thus, prior to the time that a representative employee complement had been employed at its Kenova, West Virginia, facility, and prior to the time that any employee at such facility had executed an authorization card for Local 505, Respondent entered into a collective-bargaining agreement with Local 505 in which Respondent recognized Local 505 as the exclusive collective-bargaining representative of the employees in the described Kenova, West Virginia, bargaining unit. Accordingly, it is concluded and found as alleged that Respondent violated Section 8(a)(2) and (1) of the Act.

J. *The Transfer of Employees and Work*[18]

On or about September 28, 1980, Respondent transferred a very substantial portion of its truckdriving duties relating to servicing of customers in the Kentucky-West Virginia area from its Coal Grove facility to its Kenova, West Virginia, facility. At the same time, Respondent transferred the following employees from its Coal Grove, Ohio, facility to its Kenova, West Virginia, facility.

Leslie Burd	Lester Napier
Glenn Carr	Donald Rambo
Ellis Davis	William Riffe
Tex G. Devore	Dean R. Robinson
Homer Dickerson	Robert Ross
Boyce Dotson	Kenny Lee Skeens

[17] The agreement was dated August 8, 1980. Whether this is correct is not clear. It is clear that the agreement was executed in early August 1980.

[18] The facts are clear and are not in real dispute.

Harold Grim	Kenny Ray Skeens
Carl Hamilton	Ivan Smith
Don Holbrook	Robert L. Smith
Glenn Hopper	Harry G. Sparks
Don Howard	Charles Spears
Fred Mann	William Stover
James McGinnis	John Thomas
George Menshouse	Hancel Truesdell
Harold Montavon	Tommy Ward
Chester Napier	Merrill Wells
Elmer Napier	Clayton Wheeler

The facts are clear that Respondent employed the above-named employees at Kenova, West Virginia, facility at rates of pay less than the contractual rates of pay applicable to the employees under the existing collective-bargaining agreement between it and the Union for the Coal Grove facility. Instead, Respondent employed such employees at pay rates and other conditions of employment as set forth under the August 1980 collective-bargaining agreement with Local 505,[19] and different from the pay rates and conditions as set forth in or required by its existing collective-bargaining agreement with Local 159.

Contentions and Conclusions

The General Counsel alleges in effect and contends that the failure to utilize the wage rates and conditions of employment at the Kenova facility in August and September 1980, which were set in the existing collective-bargaining agreement with the Union (Local 159 and the Central Conference of Teamsters), constituted conduct violative of Section 8(a)(5) and (1) of the Act. Respondent appears to argue that Respondent was free to make changes or to implement different wages and conditions of employment for Kenova employees.

I find merit to the General Counsel's contentions. The overall facts reveal that the bargaining unit work for the Coal Grove unit in this case included the work transferred to the Kenova facility. The Coal Grove bargaining unit had performed such bargaining unit work. Respondent's actions in meeting and discussing its problem concerning the Kentucky-West Virginia work and other economic problems with the Union, in following its collective-bargaining agreement with the Union (Local 159 and the Central Conference of Teamsters), and in recognizing a union albeit an unlawfully assisted union, constitute in effect a recognition or an admission by Respondent that the facility at Kenova was in fact part of the existing bargaining unit. The transfer of a substantial number of bargaining unit employees from one facility to another facility to continue performing bargaining unit work reveals a continuation of the bargaining unit. Under such circumstances, the implementation of wage scales and conditions of employment different from those in the existing collective-bargaining agreement, without agreement thereto by the Union and a consequent failure to apply the existing collective-bargaining agreement with Local 159, constituted conduct violative of Section 8(a)(5) and (1) of the Act.[20]

Respondent's major contention, in defense of its actions of transfer of operations, of transfer of employees, and of implementing new terms and conditions of employment for the employees transferred, is that it did so in accordance with its collective-bargaining contract with the Teamsters. I have considered such argument but find it without merit. Respondent's collective-bargaining agreement covering its employees was with the Union (Local 159 and the Central Conference of Teamsters). Reasonably construed, the bargaining unit covered by such contract was the one represented by Local 159. Reasonably construed, the bargaining unit work covered by such contract was the work performed by such bargaining unit employees. The overall facts are clear that what was contemplated and what actually occurred was a transfer of bargaining unit work and bargaining unit employees to an essentially new facility. As has been indicated, Respondent's own actions, in its unlawful agreement with Local 505 concerning such new facility, constitute in effect an admission that it realized that it was transferring bargaining unit work and bargaining unit employees from Coal Grove, Ohio, to Kenova, West Virginia. Reasonably construed, the collective-bargaining agreement between Respondent and the Union provided for the procedures as to transfers of individual employees. Such contract did not provide for the determination of collective bargaining at a new facility staffed by nonbargaining unit employees or for nonbargaining unit work. Where the facts are clear that bargaining unit work has been transferred to a new facility and such facility is substantially manned by transferred bargaining unit employees, it is clear that the new facility is in fact an accretion to the existing bargaining unit. Accordingly, it is clear, as has been found, that the failure of Respondent to apply the terms of its collective-bargaining agreement with the Union (Local 159 and the Central Conference of Teamsters) on and after September 28, 1980, at its Kenova, West Virginia, facility, was and is violative of Section 8(a)(5) and (1) of the Act.

The General Counsel alleges and contends in effect that the transferring of "truck driving" duties for employees from its Coal Grove, Ohio, facility to its Kenova, West Virginia, facility, on September 28, 1980, was violative of Section 8(a)(5) and (1) of the Act because the Union was not afforded an opportunity to negotiate and bargain as the exclusive representative of the bargaining unit employees with respect to such acts and conduct and the effects of such acts and conduct. Respondent argues in effect that it afforded the Union an opportunity to bargain about the transfer of work from Coal Grove, Ohio, to Kenova, West Virginia.

The overall facts reveal that the Union had an opportunity to bargain about the possibility of transfer of work. Such opportunity was tainted, however, by Respondent's conduct violative of Section 8(a)(1), (2), and

[19] The employees who were transferred from the Coal Grove, Ohio, facility to Kenova, West Virginia, had bid for such transfer in accordance with contractual bidding procedures.

[20] Where there is an existing collective-bargaining agreement, Sec. 8(d) provides in effect that changes in terms of the contract cannot be made unilaterally or without agreement by the other contracting party. See *Eastern Market Beef Processing Corporation*, 259 NLRB 102 (1981).

(3), as found otherwise herein. Under such circumstances, I am persuaded that the Union did not have a realistic opportunity to bargain about the transfer of work from Coal Grove, Ohio, to Kenova, West Virginia. Accordingly, it is concluded and found, as alleged, that Respondent engaged in conduct violative of Section 8(a)(5) and (1) of the Act.

The General Counsel contends and alleges and Respondent denies that the transfer of 34 employees from Coal Grove, Ohio, to Kenova, West Virginia, constituted discriminatory conduct within the meaning of Section 8(a)(3) and (1) of the Act.

Considering that Respondent unlawfully assisted Local 505 and entered into a collective-bargaining agreement with Local 505, and that Respondent did not honor its collective-bargaining agreement with Local 159 as regards its Kenova facility, the facts require a finding that Respondent's transfer of employees from Coal Grove, Ohio, to Kenova, West Virginia, was discriminatorily motivated to evade its bargaining and contractual obligations with Local 159. This being so, Respondent's transfer of employees on September 28, 1980, from Coal Grove, Ohio, to Kenova, West Virginia, constituted conduct violative of Section 8(a)(3) and (1) of the Act. It is so concluded and found.[21]

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent as set forth in section III, above, occurring in connection with Respondent's operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

Upon the basis of the above findings of fact and upon the entire record in the case, I make the following:

CONCLUSIONS OF LAW

1. The Respondent, Ford Brothers, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Teamsters Local Union No. 159, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

3. Teamsters Local Union No. 505, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

4. By transferring employees in such a manner as to attempt to place them under the jurisdiction of a union other than that of their exclusive collective-bargaining representative so as to evade contractual obligations, Respondent has discouraged membership in Local 159 by discriminating in terms and conditions of employment, thereby engaging in unfair labor practices in violation of Section 8(a)(3) and (1) of the Act.

5. The following employees constitute an appropriate unit for purposes of collective bargaining within the meaning of Section 9(b) of the Act.

The employees of Respondent who work at Respondent's facility at Coal Grove, Ohio, and/or at Coal Grove, Ohio, and who were transferred to Respondent's Kenova, West Virginia, terminal, and who were treated by the parties as covered by the collective-bargaining agreement, Central States Area Tank Truck Agreement, and the Ohio Rider to Central States Area Tank Truck Agreement, as specified in such agreements in effect in 1980, and as stipulated with respect to truckdriver and mechanic employees as being represented by Teamsters Local 159, and other Kenova terminal employees performing similar work, and excluding all office clerical employees, and all professional employees, guards and supervisors as defined in the Act. Such employees are also referred to in one of the above agreements as follows:

> Section 1.2—Employees Covered
>
> (a) The employees covered by this Agreement shall include any and all the employees of the Employer employed directly by and/or under the supervision and control of the Employer within the jurisdiction of the Union and who are represented by the Local Union or during the life of this Agreement may come to be represented by the Local Union.

6. Teamsters Local Union No. 159, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, and the Central Conference of Teamsters, constitute a single, integrated bargaining representative and, as such single, integrated bargaining representative, has been the designated exclusive collective-bargaining representative of Respondent's employees described above.

7. By refusing to bargain about the relocation of part of an existing appropriate collective-bargaining unit, and by refusing to recognize the above referred to exclusive collective-bargaining representative as exclusive collective-bargaining representative for a relocated part of the existing appropriate collective-bargaining unit and in connection therewith refusing to apply the existing collective-bargaining agreement as regards wages and conditions of employment for bargaining unit employees, Respondent has engaged in conduct violative of Section 8(a)(5) and (1) of the Act.

8. By recognizing and entering into a collective-bargaining agreement with, and by rendering aid and assistance to, Teamsters Local Union No. 505, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Respondent has aided and assisted a labor organization and thereby has engaged in conduct violative of Section 8(a)(2) and (1) of the Act.

9. By the foregoing and by interfering with, restraining, and coercing its employees in the exercise of rights

[21] *Helrose Bindery, Inc. and Graphic Arts Finishing, Inc.*, 204 NLRB 499, 504 (1973).

guaranteed in Section 7 of the Act, Respondent engaged in unfair labor practices proscribed by Section 8(a)(1) of the Act.

10. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

It having been found that Respondent has engaged in unfair labor practices in violation of Section 8(a)(1), (2), (3), and (5) of the Act, I shall recommend that it be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

With regard to the 8(a)(3) violations, I shall recommend that Respondent be required to make whole each of the named employees for backpay from the date of the discrimination against them until the date that Respondent recommences applying the 1979–82 collective-bargaining agreement between Respondent and the Union (Local 159 and the Central Conference of Teamsters), or successor contract as regards rates of pay and conditions of employment for such employees. Backpay and interest thereon is to be computed in the manner prescribed in *F. W. Woolworth Company*, 90 NLRB 289 (1950), and *Florida Steel Corporation*, 231 NLRB 651 (1977).[22]

With regard to the 8(a)(2) violations, I shall recommend that Respondent be ordered to withdraw recognition from, and to cease giving aid and assistance to, Local 505 as the exclusive collective-bargaining representative of Respondent's employees in the below listed bargaining unit, unless and until it has been duly certified by the National Labor Relations Board as such representative, and that Respondent reimburse employees for dues and initiation fees paid to Local 505.

Further, it will be recommended that Respondent be required to cease and desist from giving effect to any collective-bargaining agreement with Local 505 to the extent that it covers employees in said bargaining unit.

With regard to the 8(a)(5) violations, I shall recommend that Respondent, upon request, bargain collectively with the Union (Local 159 and the Central Conference of Teamsters) as the exclusive bargaining representative of the employees in the appropriate bargaining unit (employees at Coal Grove, Ohio, and Kenova, West Virginia, as specifically described in an appropriate unit previously herein and incorporated by reference at this point), and that Respondent apply the terms of its existing 1979–82 collective-bargaining agreement with the Union (Local 159 and the Central Conference of Teamsters) until such terms are changed by collective bargaining, to all employees in the appropriate bargaining unit. In such regard, the application of such terms of employment conditions to bargaining unit employees means to immediately recommend application of such terms of employment to the Kenova employees in the appropriate bargaining unit.

With further regard to the 8(a)(5) violations, I note that Respondent relocated a substantial part of its bargaining unit without giving the Union a realistic opportunity to bargain about such relocation. Respondent's relocation of part of the bargaining unit to Kenova, West Virginia, may not be of such a nature as to make a return to Coal Grove, Ohio, difficult. Nevertheless, rather than requiring a return of the bargaining unit work and bargaining unit employees to Coal Grove, Ohio, I shall instead recommend that Respondent be required to bargain with the Union as to such return to Coal Grove or as to adjustments in conditions otherwise.

In view of Respondent's significant violations of Section 8(a)(1), (2), (3), and (5), as referred to above, and the nature of the same revealing a general disregard for employees' fundamental statutory rights, a broad cease-and-desist order will be recommended. *Hickmott Foods, Inc.*, 242 NLRB 1357 (1979).

Upon the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[23]

The Respondent, Ford Brothers, Inc., Coal Grove, Ohio, and Kenova, West Virginia, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Transferring bargaining unit employees or bargaining unit work or relocating appropriate bargaining unit operations from one facility to another facility without consent or without giving notice to and bargaining with the exclusive collective-bargaining representative within the meaning of Section 8(d) of the Act.

(b) Refusing to apply the terms and conditions of the existing collective-bargaining agreement with the Union (Local 159 and the Central Conference of Teamsters), covering employees in the below listed appropriate collective-bargaining unit, to employees in said appropriate collective-bargaining unit when performing collective-bargaining unit work.

(c) Discriminating against employees so as to rid itself of contractual obligations, or bargaining obligations otherwise with the Union (Local 159 and the Central Conference of Teamsters) or any other union as the exclusive collective-bargaining representative of the employees in the appropriate bargaining unit set out hereinafter, and otherwise discriminating against employees because of their membership in any labor organization.

(d) Refusing to bargain collectively with the Union (Local 159, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, and the Central Conference of Teamsters) as the exclusive bargaining representative of all employees in the following appropriate unit.

The employees of Respondent who work at Respondent's facility at Coal Grove, Ohio, and/or at Coal Grove, Ohio, and who were transferred to Respondent's

[22] See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

[23] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

Kenova, West Virginia, terminal, and who were treated by the parties as covered by the collective-bargaining agreement, Central States Area Tank Truck Agreement, and the Ohio Rider to Central States Area Tank Truck Agreement, as specified in such agreements in effect in 1980, and as stipulated with respect to truckdriver and mechanic employees as being represented by Teamsters Local 159, and other Kenova terminal employees performing similar work, and excluding all office clerical employees, and all professional employees, guards and supervisors as defined in the Act constitute an appropriate bargaining unit. Such employees are also referred to in one of the above referred to agreements as follows:

> Section 1.2—Employees Covered
>
> (a) The employees covered by this Agreement shall include any and all the employees of the Employer employed directly by and/or under the supervision and control of the Employer within the jurisdiction of the Union and who are represented by the Local Union or during the life of this Agreement may come to be represented by the Local Union.

(e) Granting recognition to, executing a collective-bargaining agreement with, or otherwise maintaining, enforcing, or giving effect to recognition or bargaining agreements with, or otherwise aiding and assisting Teamsters Local Union No. 505, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, in any other manner to be the exclusive collective-bargaining representative of any of the employees in the appropriate unit described above.

(f) Threatening employees with discharge and other reprisals to cause them to sign authorization cards for a union.

(g) In any other manner interfering with, restraining, or coercing employees in the exercise of their rights guaranteed in Section 7 of the Act, except to the extent that such rights may be affected by lawful agreements in accord with Section 8(a)(3) of the Act.

2. Take the following affirmative action which it is found will effectuate the policies of the Act:

(a) Make the employees listed below whole for any loss of pay or other benefits suffered by reason of the discrimination against each in the manner described above in the section entitled "The Remedy."

Leslie Burd	Lester Napier
Glenn Carr	Donald Rambo
Ellis Davis	William Riffe
Tex G. Devore	Dean R. Robinson
Homer Dickerson	Robert Ross
Boyce Dotson	Kenny Lee Skeens
Harold Grim	Kenny Ray Skeens
Carl Hamilton	Ivan Smith
Don Holbrook	Robert L. Smith
Glenn Hopper	Harry G. Sparks
Don Howard	Charles Spears
Fred Mann	William Stover
James McGinnis	John Thomas
George Menshouse	Hancel Truesdell
Harold Montavon	Tommy Ward
Chester Napier	Merrill Wells
Elmer Napier	Clayton Wheeler

(b) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(c) Rescind any existing collective-bargaining agreement with and withdraw and withhold recognition from Teamsters Local Union No. 505, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, as the exclusive bargaining representative of any of the employees in the appropriate unit described above, unless and until it has been certified by the National Labor Relations Board as such representative.

(d) Reimburse all employees for all initiation fees and dues paid by them to Teamsters Local Union No. 505, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, through dues checkoff since on or about August 1, 1980.

(e) Recognize and, upon request, bargain in good faith with Teamsters Local Union No. 159, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America and the Central Conference of Teamsters, as the exclusive collective-bargaining representative of employees in the above-described appropriate bargaining unit, with respect to the continued location or relocation of the bargaining unit facilities at Coal Grove, Ohio, and Kenova, West Virginia, or any adjustments thereto, and as to all other matters relating to wages, rates of pay, hours, and other terms and conditions of employment.

(f) Submit the work at its Kenova, West Virginia, terminal for rebidding by employees, with all employees having the same rights for such bidding as they had on September 27, 1980, and assign such employees to the Kenova, West Virginia, terminal in accordance with the collective-bargaining agreement with Local 159 and the Central Conference of Teamsters, provided, however, if agreement is made with said Union resulting in a return of the Kenova, West Virginia, work to Coal Grove, Ohio, such rebidding by employees and reassignment of employees shall be in accordance with such agreement.

(g) Apply the terms and conditions of the collective-bargaining agreement with Local 159 and the Central Conference of Teamsters, as it now exists or may be modified within the concept of collective bargaining, to all employees in the appropriate collective-bargaining unit, set forth above, as long as said Union is the exclusive collective-bargaining representative of such employees.

(h) Post at Respondent's facilities at Coal Grove, Ohio, and Kenova, West Virginia, copies of the attached notice marked "Appendix."[24] Copies of said notice, on forms

[24] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by *Continued*

provided by the Regional Director for Region 9, after being duly signed by Respondent's representatives, shall be posted by it immediately upon receipt thereof, and be maintained by Respondent for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(i) Notify the Regional Director for Region 9, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

IT IS FURTHER ORDERED that the allegations of unlawful conduct not specifically found to be violative herein be dismissed.

Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."